IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPEAL NO.393 OF 2001

Machhindrasingh Tarasingh Tak, aged about 28 years occupation Labourer, residing at Rambai Nagar, Pimpri Pune, (At present detained at Yerawada Central Prison) Pune. ..Appellant (Ori.Accused No.1)

Vs.

The State of Maharashtra ..Respondent

....

Mr.M.S.Mohite advocate for Appellant-ori.accused no.1
Smt.Usha Kejeriwal A.P.P. for Respondent-State

....

WITH
CRIMINAL APPEAL NO.602 OF 2001

The State of Maharashtra ..Appellant

Vs.

1. Jagdishsingh Tarasingh Tak, Age 31 yrs, Occ: Labourer,

2. Charansingh Tarasingh Tak, Age 25 yrs. Occ: Labourer

3. Natwarsingh Rajamandar-singh Sikh & Dudhani, Age 19 yrs. Occ: Labourer, All residing at Ramabai Nagar, Pimpri Pune, Dist. Pune. ..Respondents

(Ori.Accused Nos. 2 to 4).

....

Smt.Usha Kejeriwal A.P.P. for State
Mr.M.S.Mohite advocate for Respondents-original accused nos.2 to 4

...

CORAM: N.V.DABHOLKAR AND SMT.V.K.TAHILRAMANI,JJ.

DATE : FEBRUARY 13,2006

ORAL JUDGMENT [PER N.V.DABHOLKAR,J.]:

1. Sessions Case No.40 of 2000 by which four accused persons were tried for offences punishable under Sections 302, 326 and 323 r.w. 34 of Indian Penal Code was disposed of by IIIrd Ad-hoc Additional Sessions Judge, Pune vide his judgment and order dated 30.4.2001. The learned trial Judge held original accused no.1-appellant in Criminal Appeal No.393 of 2001 guilty for offence of murder of victim Satpalsingh Bishansingh Sikh and he is sentenced to suffer R.I. for life. Original accused nos.2 to 4 are acquitted of all the charges those were levelled against them. Naturally accused no.1 is aggrieved by his conviction and State by acquittal of original accused nos.2 to 4.

. Criminal Appeal No.393 of 2001 is preferred by convicted accused challenging the said judgment and order and finding of guilty, conviction and sentence recorded against him. State by another appeal (Cri.Appeal No.602 of 2001) under Section 378(1)(3) of the Code of Criminal Procedure 1973, has expressed grievance against acquittal of accused nos.2 to 4. Since both the appeals challenge the same judgment from different angles, the two appeals were clubbed together, heard together and are being disposed of together.

2. Complainant Jatpalsingh Sikh (Jagatpalsingh) is a real brother of deceased Satpalsingh. P.W.2 Jogasingh Sikh is his elder brother. The incident in question took place on 17.2.1999 and according to prosecution, it took place in two parts, first part was at railway plat-form of Pimpri Railway Station while complainant Jatpalsingh, his brother Jogasingh, victim Satpalsingh along with one Krishnasingh (nephew of complainant), Dudhnath Jaiswal and Govind Chavan were waiting at the plat-form for the train when accused nos. 1 to 4 are alleged to have rushed at them. The

prosecution party noticed arrival of accused nos.1 to 4 in an aggressive manner. While accused were at some distance of 15 to 20 feet, accused were pelting stones and hence, the prosecution party took to their heels. They were chased by accused and at Arya Samaj Chowk, it is said, accused no.2 Jagdishsingh gripped Satpalsingh and accused no.1 Machhindrasingh dealt with single knife blow on the left side chest of Satplasingh. Satpalsingh collapsed. Accused nos.3 and 4 are said to have caught hold of P.W.2 Jogasingh and dealt him by fist and kicks with footwears on.

. After this incident, complainant and Krishnasingh took Satpalsingh to Pimpri Police Chowky (not the police chowky at railway plat-form existence of which has come on record in the cross-examination of prosecution witnesses. In fact, it is an admitted position that prosecution witnesses were at a distance of 15 to 20 feet from police chowky at railway plat-form when accused persons charged at them). According to complainant, victim Satpalsingh was sent to Y.C.M. hospital by rickshaw along with a police constable and P.S.I. present at Pimpri Police Chowky

recorded the complaint of Jatpalsingh at about 7.30 or 8.00 p.m. Satpalsingh expired at the hospital at about 10.00 p.m. on the same night.

. P.S.I. Prabhakar Pawar (P.W.8) was present at Pimpri Chowky and he had recorded complaint. The investigation was carried out by P.W.9 Shrikant Patil (Police Inspector). After committal, the trial before the Sessions Judge has ended in conviction of accused no.1 and acquittal of others as described hereinabove.

. It is not disputed that prosecution witnesses and accused are related to each other by matrimonial relationship. It is also not disputed that the marriages having frustrated, the families are daggers drawn. P.W.3 Vatankaur was married to accused no.2 about 15 years ago and Vatankaur separated from the husband about one year prior to the alleged incident, allegedly because of illtreatment at the hands of husband. It is the claim of complainant Jagpalsingh that while Vatankaur was trying to earn her livelihood by vegetable vending, accused persons were creating obstruction for the same. Attarkaur is the sister

of accused no.2 Jagdishsingh. She is married to Rajmandar, the elder brother of the complainant. It is said that accused no.2 and others beat Rajmandar and drove him away. Impliedly, marital life of Attarkaur is also in danger. Neither the prosecution nor defence have made any secrets that relations between the parties are consequently strained. The incident in question is required to be considered on this background of the two families.

3. The prosecution has examined in all nine witnesses. Apart from complainant Jagpalsingh, P.W.2 Jogasingh, elder brother, also provides eye witness account of the incident. In fact, as can be seen from Exhibit-11, charge under Sections 326 and 323 read with Section 34 of Indian Penal Code was framed by the trial Court under the belief that Jogasingh was seriously injured. (Record shows that there is no medical evidence regarding any injury suffered by P.W.2 Jogasingh, although it is claimed during the evidence that Jogasingh was man-handled by accused nos.3 and 4 with the fist and kick blows.) P.W.3 Vatankaur is sister of P.Ws. 1 and 2. She is the wife of accused no.2. Her

evidence is only regarding arrival of P.Ws.1 and 2 at her business place and departure for railway station therefrom.

. Dr.Milind Sonawane (P.W.7) is Autopsy Surgeon and after post-mortem, he has recorded opinion that Satpalsingh suffered death as a result of "Haemorrhagic shock due to abdominal stab injury". The post-mortem notes are at Exhibit-50 and on reference to column no.17, it is evident that only one stab wound over left lateral abdomen exactly in the mid line of axilla is suffered by the victim as a result of violence. Although, column no.17 records three injuries, first on the neck and second on the left hand ventral aspect, those are clarified by the Medical Officer himself as surgical wounds i.e. injuries required for the purpose of giving treatment to the patient.

. Spot panchnama (Exhibit-44) was drawn in presence of panch witness Maman (P.W.4) and clothes of accused nos.1 and 2 were seized by drawing panchnama (Exhibit-46), which proceedings were attended by panch witness Maruti (P.W.5). The third panch witness Balu Humbre (P.W.6) is of significant importance. Prosecution claims

discovery of weapon, knife, at the instance of information given by accused no.1 Machhindrasingh. Memorandum and Panchnama are at Exhibits-55 and 56. As already referred, P.S.I. Pawar (P.W.8) has registered complaint and P.W.9 Patil had carried out the investigation.

4. As can be seen from Written Statements filed at Exhibits-64 and 65, the accused nos.1 and 2 have come out with a bold defence. The same defence is persisted also during the course of cross-examinations of complainant Jagpalsingh and P.W.2 Jogasingh. The Written Statements filed during the course of statement under Section 313 of Code of Criminal Procedure, 1973 by accused nos.1 and 2, are identical. It is said that Jagpalsingh and Jogasingh (P.Ws.1 and 2) and their family members were annoyed with accused persons and this was because police had filed prosecutions against them on the basis of complaints lodged by the accused. On 17th February, 1999, while accused nos.1 and 2 were proceeding for Vaishnav Devi temple at Arya Samaj square, they were obstructed by deceased Satpalsingh, P.Ws.1 and 2 and others. The prosecution witnesses challenged them for

filing complaints against the prosecution witnesses. In fact, deceased Satpalsingh drew out a knife and charged at accused no.1 Machhindrasingh. While Machhindrasingh caught hand of Satpalsingh and was trying to save himself, there was scuffle between the two and in the scuffle, Satpalsingh has suffered injury which is required to be termed as an accident. Thereafter, P.W.2 Jogasingh had charged at the accused persons with the knife, and therefore, accused persons had run away.

. These Written Statements appear to contend an alternate defence. It is said that P.Ws. do not know as to how knife injury was suffered by victim Satpalsingh. They have lodged complaint after seeing the dead body in the hospital and that is why in their statements before police, they have narrated the accused no.1 to have inflicted three injuries upon person of deceased Satpalsingh although couple of injuries are surgical wounds. In brief, it can be said that it is the defence on behalf of accused nos.1 and 2 that accused no.1 did not voluntarily inflict the injuries upon Satpalsingh and therefore, he is not liable for

punishment under Section 302 of IPC.

5. In the impugned judgment in paragraph 10, the learned trial Judge has observed that neither complainant Jagpalsingh nor P.W.2 Jogasingh (alleged injured) have deposed any of the accused having caused hurt to P.W.2 Jogasingh and therefore, the charge under Section 326 ought to fail. (Although two lawyers together have taken us practically through entire evidence, we have failed to find any material on record that could have invited charge under Section 326 of IPC for inflicting injuries to P.W.2 Jogasingh. Why the charge was framed has remained a mystery for us.) For the reasons discussed in para 11, the learned trial Judge is of the view that charge under Section 323 read with Section 34 of IPC has also failed. By such observation, the learned Judge has rejected the prosecution story that P.W.2 Jogasingh was man-handled by accused nos.3 and 4 and dealt with fist blows and kick blows. This is mainly because Jogasingh admitted in his cross-examination that accused persons kicked him with footwears on. He has suffered discolouration on his skin. He had been to the hospital and yet, he had not shown any

injury on his person to the Medical Officer. Needless to say that, there is no medical evidence on record regarding injury, if any, suffered by P.W.2 Jogasingh.

. For the reasons in para 13, the learned Judge was disinclined to believe the prosecution story of discovery of weapon at the instance of information furnished by accused no.1. It may be said here itself that this negative finding was seriously challenged by learned A.P.P.

. Ignoring the non-examination of independent witnesses who were available in the form of Dudhnath and Govind, although friends of P.Ws., uninterested in the sense that they were not related to either family; learned Judge cautioned himself that he has to deal with evidence of interested witnesses uncorroborated by independent evidence. While considering the evidence of complainant Jagpalsingh and P.W.2 Jogasingh for the reasons discussed in paragraph 18, the learned Judge has disbelieved the part of the incident that is alleged to have taken place at railway platform of Pimpri and in paragraph 19, the Judge proceeded

to observe that it was by chance that P.Ws.1 and 2 and accused nos.1 to 4 had confrontation at Arya Samaj Chowk. Probably, this observation is based upon the support of bold defence raised by the accused. It may be said that by claiming right of self-defence, accused nos.1 and 2 have admitted their presence at the location, not only that but scuffle between the deceased Satpalsingh and accused no.1 is also undisputed. In paragraph 20 of the judgment, the trial Judge has discussed reasons for his conclusion that role as attributed to accused no.2, is also not worthy of belief.

. So far as the narration in the complaint regarding deceased having suffered three injuries at the hands of accused no.1, the learned trial Judge refused to discredit the prosecution witnesses by saying that what they deposed from the witness box is the evidence and by subtracting that material, while deposing from the witness box, the witnesses have on the contrary, tried to stick to the truth.

. Ultimately, the learned Judge observed that evidence of P.Ws.1 and 2 to the effect that accused

no.1 Machhindrasingh gave single knife blow on the left side abdomen of deceased Satpalsingh, was supported by medical evidence, and therefore, acceptable. For the reasons discussed in paragraph 25, the learned Judge has ruled out the defence theory or any probability of incident having occurred in the manner as propounded by the defence. Consequently, the judgment ended by recording conviction of accused no.1 alone.

6. Heard advocate Shri.M.S.Mohite for all four accused as appellant in first appeal and respondents in second appeal and the learned A.P.P. for the State.

. While dealing with two appeals, one against conviction of accused no.1 and another challenging the acquittal of accused nos.2 to 4, we must remind ourselves of the parameters regarding the appeals against acquittal. Ordinarily, this Court could not interfere with the judgment of acquittal unless the same is perverse, or based on inadmissible evidence or as a result of ignorance of evidence validly admitted on record. Only if the trial Court on the basis of material on record has taken

such a view which is impossible, this Court may step in to reverse the judgment of acquittal. So far as the judgment of conviction is concerned, the same parameters as in the trial, would be applicable. It will be open for the accused to argue all points of fact and law and claim that charge against appellant/convicted accused, is not proved beyond reasonable doubt.

7. The learned A.P.P. has urged that trial Court has discarded the discovery evidence under Section 27 of the Indian Evidence Act on flimsy ground and that ought to have been accepted and once discovery at the instance of accused no.1 is believed, the conviction as against accused no.1 strengthens. According to her, since all four accused together charged towards victim and his companions, the circumstance is sufficient to indicate that all four accused acted infurtherence of common intention. Unfortunately, learned A.P.P. lost sight of the fact that the trial Court has disbelieved part of the prosecution story to the extent it took place at Pimpri railway platform. Learned A.P.P. has placed reliance upon the couple of judicial pronouncements for the purpose of

opposing the claim of right of self-defence raised by the convicted accused in the trial Court and persisted before this Court.

. Advocate Shri.Mohite while challenging the conviction of accused no.1, has pointed out that the trial Court has disbelieved the entire prosecution story except one line story that accused no.1 dealt with one knife blow in the left side abdomen of deceased Satpalsingh. According to learned counsel, the trial Judge did not give due weightage to the fact that the major portion of the prosecution story is disbelieved. He relied upon the circumstances that enmity between the parties is undisputed. He pointed out that all admissions by P.Ws. 1 and 2, defence has brought on record the fact that prosecution side being subjected to face criminal trials on the basis of complaints by accused persons. He desired us to draw an inference that accused persons are law abiding citizens and if at all, it was the prosecution side which had an axe to grind against the accused persons. He did not fail to point out that while rejecting the defence theory, the trial Court has recorded the observations against the record so far

as admission by Medical Officer is concerned.

8. So far as the challenge by learned A.P.P. to the reasons and findings in paragraph 13 of the impugned judgment whereby the learned trial Judge was not inclined to believe the evidence of discovery of weapon at the instance of accused, we are partly in agreement with her. Reading para 13 in an isolated manner, the fact that witness faltered on the point of label that was annexed to the weapon, which was creation by the office for the purpose of identification of Muddemal placed in the 'Malkhana' amongst other articles, does not appear to be sound reason to disbelieve the evidence of panch witness. Eventually, the learned A.P.P. took us through the deposition of panch witness Balu (P.W.6) and on going through the same, we find more reasons to disbelieve the evidence of Balu (P.W.6).

. On reference to Memorandum and Panchanama Exhibits 55 and 56, it is evident that those were drawn between 16.00 to 16.10 hours and 16.10 to 18.10 hours. According to panch Balu (P.W.6), they came back to Police Station from the place at about

4.00 p.m. (and not 6.00 p.m. as recorded in the panchnama). No doubt, in his Chief-examination, he supported the prosecution by saying that accused no.1 made a statement which was recorded as Memorandum, thereafter, the accused guided them and gave out a knife burried under ground near the compound wall at Kharadwadi bus stop. When we refer to his cross-examination, Balu (P.W.6) has stumbled on more than one occasions. Admittedly his working hours are from 9.45 a.m. to 5.00 p.m. and he could not have been available to police before 4.00 p.m. He is not able to say firmly whether he put two signatures on police papers on that day. According to him, he was at the police station for about 5 minutes and panchnama was drawn there. Infact, Memorandum was written at the police station and panchnama was written at the location. If contents of the documents are to be relied upon, his statement that on that day, he had been to the police station twice is also a confussion. Because, in the chief-examination he has not deposed that after discovery, he had returned to police station. It must be said that the evidence rendered by Balu (P.W.6) is in a casual manner not befitting the serious

repercussions, discovery panchnamas can have effect on the fate of the accused, although for different reasons, we are inclined to concur with the trial Court that discovery evidence tendered by the prosecution, is not convincing.

. The submission of learned counsel for the accused that trial Court has disbelieved the entire prosecution story except one line story that accused no.1 has inflicted one knife blow to victim Satpalsingh, although appears harsh at first blush, is sustainable on the basis of material on record.

. We are unable to find any fault in the reasons recorded by the learned Judge in para 18 for which he disbelieved the part of the incident that occurred at Pimpri railway platform. We may not give much importance to the fact that no independent witness is examined, but if we take into consideration the natural course of human conduct, this part of prosecution story suffers and fails on the touchstone of probability. As rightly pointed out by the learned counsel that there were four accused persons as against which prosecution team was stronger than them. They were six persons

i.e. P.Ws.1 and 2, deceased Satpalsingh, Krishnasingh, Dudhnath and Govind Chavan. According to prosecution version itself, witnesses noticed arrival of the accused persons while accused were at some distance. If at all, prosecution witnesses were scared of the accused persons, they could have made escape good by early start in the action of running away. The story that although accused pelted stones from a distance of hardly 15 feet, none of these strong prosecution party suffered a scratch, is also unpalatable. The last but not least as admitted by P.W.2 Jogasingh, there is a police chowky at Pimpri Railway platform. This chowky was only 15 feet away from the place where the prosecution party was standing. Yet, the six persons scared by arrival of accused, ran away from the platform and did not take shelter with the police chowky available at a distance of 15 feet for which the story of occurrence at the platform as narrated by the prosecution, is required to be disbelieved.

9. The learned counsel invited us all the while, to consider all the parts of prosecution story on the touchstone of probability and natural course of

human conduct. Obviously because, P.Ws.1 and 2 have consistently deposed that accused no.2 Jagdishsingh caught Satpalsingh at Arya Samaj square and accused no.1 Machhindransingh assaulted Satpalsingh on left side of chest by knife. The story of the prosecution to the extent it is disbelieved by the trial Court is so brief and within narrow compass that defence has no chance to find any contradiction in this one line grievance.

10. Shri.Mohite has taken us through depositions of Jagpalsingh and Jogasingh (P.Ws.1 and 2) and sufficiently demonstrated that enmity between the families is not disputed. In fact, Jagpalsingh admitted; "our family and family of accused nos.1 to 4 are on inimical terms". On reference to para 8 of the deposition of complainant Jagpalsingh, it is evident that initially he attempted to avoid question regarding their prosecution by the family of the accused. He was compelled to admit that when chapter case number was quoted to him. Admission of P.W.2 Jogasingh confirms that Rajmandersingh (brother of complainant), his mother, his sister-in-law (wife of brother) and Vatankaur are prosecuted on the basis of complaint

of Attarkaur (mother of accused no.4). Jogasingh (P.W.2) unhesistantly admitted that their family did not like Vatankaur was driven away and that Attarkaur lodged complaints against them.

. Although, we will not stretch interference to the extent desired by learned counsel Shri.Mohite that accused persons are very much law abiding citizens; fact remains that complaints are filed by accused persons and charges were being faced by the prosecution side at the time of alleged incident. If at all, any party had reason to assail otherside without any reasons on the spur of moment, it was the prosecution side who could have been in such a frame of mind. This fact situation is totally ignored by the trial Judge and has gone undiscussed.

11. No doubt, Jagpalsingh and Jogasingh (P.Ws.1 and 2) while deposing from the witness box that accused no.1 inflicted single knife blow in the left side abdomen of victim Satpalsingh, appeared to have shaved off the incorrect/false statements in the complaint and police statement, and the learned Judge is justified in observing that they

did not render false evidence by claiming infliction of three injuries. However, trial Judge did not address himself to the psychology of these two witnesses in indicating all three injuries in the complaint and police statement and attributing the responsibility of those to accused no.1. The complaint is an exhibited document and Jagpalsingh denied to have stated portion marked 'A' which reads "_____
_____"
i.e. at that moment, Macchindrainsgh Tarasingh Tak inflicted blows by means of pen-knife in the left side of ribs, on the throat and on the arm of deceased Satpalsingh. In deposition, Jagapalsingh claimed that immediately after the incident, he himself and Krishnasingh took injured Satpalsingh to Pimpri police chowky, in view of urgency of medical treatment, victim was dispatched to Y.C.M. hospital along with a police constable in rickshaw. (Jagapalsingh does not seem to be aware of any of family members accompanying the victim to the hospital in the rickshaw. As against this, P.W.3 Vatankaur has claimed that not only constable but Vatankaur, Dilawarsingh and Jogasingh had accompanied the victim to the hospital). It is the

claim of Jagpalsingh that his complaint Exhibit-40 was recorded at the police station at about 7.30 to 8.00 p.m., immediately after dispatch of victim to the hospital. If that be so, there was no reason for Jagpalsingh to know that victim infact had three injuries on his person at the time of death, as already pointed out, post-mortem notes Exhibit-50 shows three injuries on the person of victim. Apart from stab wound in the left abdomen, there are surgical wounds on the throat and at the left arm. Incorporation of exactly these two locations by attributing the responsibility of those two injuries to accused no.1 on the part of complainant, cannot be taken lightly. The only inference that can be drawn, is that the complaint was recorded by Jagpalsingh after his visit to the hospital. According to him, he had been to hospital after 10.00 p.m. Consequently, he could not have returned before 10.00 p.m. and thus the complaint which was recorded much after 10.00 p.m. is ante-timed. The complaint is registered as F.I.R. at Pimpri Police Station at 9.15 p.m. and this was only after Pimpri chowky transmitted the document to Pimpri Police Station as per narration of P.S.I. Pawar. Thus, it can safely be inferred

that the complaint is shown to have been recorded at least couple of hours earlier than the time it was recorded. The contents in the complaint certainly reflect upon attitude of the prosecution that they had desired to ensure registration of a serious offence against the accused persons.

12. Coming to evidence of actual incident, we have already conceded to the arguments of learned A.P.P. that both the complainant Jagpalsingh and P.W.2 Jogasingh have narrated the incident in identical manner that accused no.2 held the victim and accused no.1 dealt with isolated blow, we intend to reproduce the limited version of these witnesses for proper appreciation:

. P.W.1 Jagpalsingh says that;

. "All of us ran towards Arya Samaj Chowk. Accused no.2 Jagdishsingh caught my younger brother Satpalsingh at Arya Samaj Chowk Pimpri. Accused no.1 Machhindrasingh assaulted Satpalsingh on left side of chest by knife. Satpalsingh fell on ground".

. After this version, it is narrated that:

. "Accused nos.3 and 4 caught elder brother Jogasingh and dealt with him fist and kicks and that accused nos.1 to 3 ran away".

. P.W.2 Jogasingh deposes the same incident as follows:

. "Accused no.2 Jagdisnghsingh caught Satpalsingh at Arya Samaj Chowk Pimpri. Accused no.1 Machhindrasingh gave knife blow below left side of ribs on chest. I tried to rescue Satpalsingh, accused no.3 Charansingh and accused no.4 Natwarsingh beat me by giving fist and kick blows. Satpalsingh sustained bleeding injuries and fell down, accused nos. 1 to 4 ran away."

. Advocate Shri.Mohite was justified in accusing these two witnesses that they have not given graphic description of the occurrence on couple of crucial aspects. None of the witnesses say about the manner in which weapon was available to accused no.1. Even it is not said that he drew it out from his own pocket. Both the witnesses do not talk whether accused fled away by leaving weapon on the

person of the victim or they carried it away.

. While disbelieving role of accused no.2 in this scuffle, the trial Judge has referred to admission of complainant Jagpalsingh that Satpalsingh was not embraced by hands of accused no.2 and Satpalsingh was not facing accused no.2. How the victim was gripped by accused no.2, ought to have been brought on record by the prosecution, which it did not. The defence took the responsibility unto itself and was successful in obtaining contradictory versions from complainant and P.W.2 Jogasingh. According to complainant, hands of Satpalsingh were caught, whereas according to Jogasingh (P.W.2), accused no.2 caught both the shoulders of the victim. The reaction of Jogasingh who claimed in the chief-examination that he tried to rescue Satpalsingh, has admitted in cross-examination that he did not go near Satpalsingh after victim fell down, is also unexplainable, so also his admission that he proceeded towards police chowky after sometime, and initially victim was taken to police chowky by complainant and Krishnasingh.

. While claiming right of self-defence, accused

have said that they i.e. accused nos.1 and 2 were obstructed by the prosecution party and they were challenged about the complaints filed by the accused persons. The accused have provided some motive for the prosecution side to obstruct and threaten them. The prosecution side has not been able to claim that there was any confrontation, may be on the spur of moment, but P.Ws. narrated a story as if four accused arrived at the scene like a bolt from the blue. This can be one more reason for faster disbelief of the story at railway platform.

13. Upon referring to depositions of first three witnesses, we have been able to find variance in the manner in which five or six strong prosecution party congregated at the railway station via business place of P.W.3 Vatankaur, but we are not inclined to discuss that minor aspect at length.

14. Two things are of salient importance. The prosecution has tried to suppress the origin of the incident and developed a story of incident commencing from railway platform. Inspite of serious attempt, learned A.P.P. has not been able

to convince us that incident at the railway platform is worthy of belief. The prosecution has also not been honest regarding the time of recording of F.I.R., and by that, they have disowned the responsibility of explaining the delay if any, in registering the complaint. It is obvious from contents of Exhibit-40 that the time gap was utilised to think before lodging the complaint, otherwise there was no reason for attribution of responsibility of surgical injuries to the accused persons. We are of considered view that by these two reasons, prosecution has made its case unreliable and therefore, we are not required to enter the degree of convincing nature of the defence raised by the accused.

15. The learned A.P.P. has placed reliance upon the decision of the Supreme Court in the matter of **Anil Kumar Vs. State of U.P.; 2005 S.C.C. (Cri.) 178** and more particularly, observations in para 12. In the reported matter, accused had suffered minor and superficial injuries. As against that there was material on record to establish that accused had fired gun-shot resulting into death of the victim. It was in the light of such facts and

circumstances that the Honourable Apex Court held that there was no basis for accepting the plea of right of private defence. It can be seen that the plea of right of self defence was rejected in the facts of that case which are different than the facts in the present case. It was a case of gun-shot fired from distance and not a case wherein, accused has accepted physical scuffle with the victim.

. In the matter of **Chacko alias Aniyan Kunju and others Vs. State of Kerala; A.I.R. 2004 S.C. 2688**, it was held that "merely because there was a quarrel and two accused persons sustained injuries, that did not confer a right of private defence extending to the extent of causing death, in this case." It is further observed that "when a right of private defence is claimed, it has to be established that accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done, was absolutely necessary."

. In the matter at hands, it is the claim of accused that victim Satpalsingh charged on accused

no.1, armed with knife, it is consistent say of the defence that the knife is vegetable knife (admittedly parties are Sikh and they can carry a kripen on their person as part of their religious faith). If a victim is assailed by appellant armed with sharp weapon, the person is certainly justified in attempting to save himself and retaliate by overpowering the assailants if necessary. If we are to accept the defence version regarding the manner in which the incident occurred, the right of self-defence had accrued in favour of accused and distinction on point of facts between the matter relied upon by learned A.P.P. and the one at hands, does not enable us to take any view favourable to the prosecution.

16. For the reasons discussed hereinabove, Criminal Appeal No.602 of 2001 challenging the acquittal of original accused nos.2 to 4, fails and is dismissed.

. Criminal Appeal No.393 of 2001 is allowed. The Judgment and order dated 30.4.2001 delivered in Sessions Case No. 40 of 2000 by IIIrd Ad-hoc Additional Sessions Judge, Pune to the extent it

holds accused no.1 Machhindrasingh Tarasingh Tak guilty for offence under Section 302 of IPC, is quashed and set aside. Appellant-accused is acquitted. He shall be set to liberty, if not required in any other case.

. Registrar (Judicial) shall ensure early dispatch of appropriate writ.

[N.V.DABHOLKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]